

**BARSHAY SANDERS, PLLC**

100 Garden City Plaza, Suite 500

Garden City, New York 11530

Tel: (516) 203-7600

Fax: (516) 706-5055

Email: *ConsumerRights@BarshaySanders.com*

*Attorneys for Plaintiff*

Our File No.: 109578

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

BRIAN EASTBY,

Plaintiff,

vs.

AMSHER COLLECTION SERVICES, INC.,

Defendant.

Docket No:

**COMPLAINT**

**JURY TRIAL DEMANDED**

BRIAN EASTBY (hereinafter referred to as “*Plaintiff*”), by and through the undersigned counsel, complains, states and alleges against AMSHER COLLECTION SERVICES, INC. (hereinafter referred to as “*Defendant*”), as follows:

**INTRODUCTION**

1. This action seeks to recover for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*, (“FDCPA”).

**JURISDICTION AND VENUE**

2. This Court has federal subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d).

3. Venue is proper under 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

4. At all relevant times, Defendant conducted business within the State of New York.

### **PARTIES**

5. Plaintiff is an individual who is a citizen of the State of New York.

6. Plaintiff, a “consumer” as defined by 15 U.S.C. § 1692a(3), is allegedly obligated to pay a debt.

7. On information and belief, Defendant's principal place of business is located in Birmingham, Alabama.

8. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

9. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another, and is therefore a “debt collector” as defined by 15 U.S.C. § 1692a(6).

### **ALLEGATIONS**

10. Plaintiff's alleged debt was primarily for personal, family or household purposes and is therefore a “debt” as defined by 15 U.S.C. § 1692a(5).

11. Sometime after the incurrence of the debt, but before the initiation of this action, Plaintiff is alleged to have fallen behind on payments allegedly owed on the alleged debt.

12. At a time known only to Defendant, Plaintiff's alleged debt was assigned or otherwise transferred to Defendant for collection.

13. In its efforts to collect the alleged debt, Defendant contacted Plaintiff by letter. (“Exhibit 1.”)

14. Defendant's letter is a “communication” as defined by 15 U.S.C. § 1692a(2).

15. As set forth in the following Counts, Defendant's letter violated the FDCPA.

### **FIRST COUNT**

#### **Violation of 15 U.S.C. § 1692f**

#### **Unlawful Fee**

16. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

17. 15 U.S.C. § 1692f provides a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.

18. 15 U.S.C. § 1692f(1) prohibits the collection of any amount, including any interest, fee, charge, or expense incidental to the debt, unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

19. Defendant maintains a website at <http://www.amsher.com>.

20. Defendant's website provides a payment portal, at <https://payamsher.virtualcollector.net>, for consumers to make payments online.

21. Defendant's payment portal sets forth that Defendant charges a transaction fee of \$5.00 for payments made.

22. Such transaction fee is neither expressly authorized by the agreement creating the debt, nor permitted by law.

23. Such transaction fee is prohibited by 15 U.S.C. § 1692f(1).

24. Defendant has violated 15 U.S.C. § 1692f by charging a transaction fee.

**SECOND COUNT**  
**Violation of 15 U.S.C. § 1692e**  
**False Representation as to Unlawful Fee**

25. Plaintiff repeats and realleges the foregoing paragraphs as if fully restated herein.

26. 15 U.S.C. § 1692e prohibits a debt collector from using any false, deceptive, or misleading representations or means in connection with the collection of any debt.

27. 15 U.S.C. § 1692e(2)(A) prohibits the false representation of the character, amount, or legal status of any debt.

28. 15 U.S.C. § 1692e(2)(B) prohibits the false representation of any services rendered or compensation that may be lawfully received by any debt collector for the collection of a debt.

29. Defendant violated § 1692e by making a false representation that it is entitled to receive compensation for payment via a transaction fee.

30. The least sophisticated consumer would likely be deceived by the transaction fee language into believing that Defendant was legally entitled to collect the fee.

31. The least sophisticated consumer would likely be deceived in a material way by Defendant's conduct.

32. Defendant has violated § 1692e by using a false, deceptive and misleading representation in its attempt to collect a debt.

**JURY DEMAND**

33. Plaintiff hereby demands a trial of this action by jury.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests judgment as follows:

- a. Statutory damages of \$1,000.00 against Defendant pursuant to 15 U.S.C. § 1692k; and
- b. Plaintiff's attorneys' fees pursuant to 15 U.S.C. § 1692k; and
- c. Plaintiff's costs; all together with
- d. Such other relief that the Court determines is just and proper.

DATED: October 22, 2015

**BARSHAY SANDERS, PLLC**

By: /s/ Craig B. Sanders  
BARSHAY SANDERS, PLLC  
100 Garden City Plaza, Suite 500  
Garden City, New York 11530  
Tel: (516) 203-7600  
Fax: (516) 706-5055  
csanders@barshaysanders.com  
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